WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)
Act 317 of 1969

418.611 Methods of securing payment of compensation; agreement between employers to pool liabilities; purpose; "public employer" defined; security; employer's liability insurance; employers in same industry; determination; nonpublic health care facility employer as member of self-insurers' group; denial or termination of self-insured status; appeal; review; application to service self-insurance program.

Sec. 611. (1) Each employer under this act, subject to the approval of the director, shall secure the payment of compensation under this act by either of the following methods:

(a) By receiving authorization from the director to be a self-insurer. In the case of an individual employer, the director may grant that authorization upon a reasonable showing by the employer of the employer's solvency and financial ability to pay the compensation and benefits provided for in this act and to make payments directly to the employer's employees as the employees become entitled to receive the payment under the terms and conditions of this act and pursuant to R 408.43c of the Michigan administrative code. If the director determines it to be necessary, the director shall require the furnishing of a bond or other security in a reasonable form and amount. Such security as may be required by the director may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state in an amount acceptable to the director, a surety bond, an irrevocable letter of credit in a format acceptable to the bureau, and claims payment guarantees.

(b) By insuring against liability with an insurer authorized to transact the business of worker's compensation insurance within this state.

(2) Under procedures and conditions specifically determined by the director, 2 or more employers in the same industry with combined assets of $1,000,000.00 or more, or 2 or more public employers of the same type of unit, may be permitted by the director to enter into agreements to pool their liabilities under this act for the purpose of qualifying as self-insurers. For purposes of this subsection, cities, townships, counties, and villages; or 1 or more of the agencies, instrumentalities, or other legal entities of cities, townships, counties, or villages or any combination thereof; or authorities of 1 or more of cities, townships, counties, or villages or any combination thereof created pursuant to law shall be considered public employers of the same type of unit. An employer member of the approved group shall be classified as a self-insurer. For purposes of this subsection, universities and colleges, community colleges, and local and intermediate school districts, shall be considered public employers of the same type of unit. The director may grant authorization to become a member of an approved group upon a reasonable showing by an employer of the employer's solvency and financial stability to meet the employer's obligations as a member of the group. If the director determines it to be necessary, the director may require the furnishing of a surety bond, fidelity bond, or other security by the group in a reasonable form and amount. Such security as may be required by the director may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state, including the state accident fund, in an amount acceptable to the director. An irrevocable letter of credit in a format currently used by the bureau on December 15, 1992 or a surety bond may be furnished in place of aggregate excess insurance. The current format of the irrevocable letter of credit used by the bureau on December 15, 1992 shall be acceptable until the format of the irrevocable letter of credit is promulgated by rules of the bureau. If an irrevocable letter of credit is proposed, the director may require an independent actuarial opinion from the group fund supporting the proposal and estimating the ultimate loss at 90% confidence level. Assets of the fund allocated for the payment of administrative expenses or set aside for claims payments shall not be used as collateral for the irrevocable letter of credit. Use of surplus assets as collateral shall require prior bureau approval. If the director determines it to be necessary, the director may obtain an independent review of the actuarial opinion submitted by the group fund at the expense of the group fund to determine the ability of the group fund to meet its obligation under the terms and conditions of this act. The group fund shall make available all documentation used for the actuarial report if requested by the director for an independent review. An employer, except a public employer, permitted to become a member of a self-insurers' group under this act shall execute a written agreement in which the employer agrees to jointly and severally assume and discharge, by payment, any lawful award entered by the bureau against a member of the group. If the case in which the award is entered is appealed by either party, then the award shall first be upheld before a member of the group may be liable. In the case of a public employer that is permitted to become a member of a self-insurers' group, any lawful award entered by the bureau against a public employer which is a member of a group, if the award is upheld on appeal, shall be a liability of the group jointly but not severally and, if the group is unable to pay the award, the group or the bureau shall individually assess those public employers who were members on the date of injury to the extent necessary to pay the award. An

assessment shall be a contractual obligation of the public employer. As used in this subsection, "public employer" means a city, village, township, county, school district, or community college; or an agency, entity, or instrumentality thereof; or an authority comprised of any combination of the foregoing. This subsection shall not alter the obligation of either a group or an employer from complying with section 862. For purposes of this subsection, an authorized group self-insurer, in conjunction with providing security for the payment of compensation and benefits provided for in this act, may provide coverage customarily known as employer's liability insurance for members of the group.

(3) For the purpose of determining whether employers are in the same industry under subsection (2), the following shall apply:

(a) The forest industry shall be considered as those businesses engaged in the growing, harvesting, processing, or sale of forest products, except at the retail level, unless more than 80% of the income from the retailer comes from the growing, harvesting, processing, or wholesale sale of forest products, and any supplier or service companies that receive more than 80% of their income from these businesses.

(b) "Forest products" include Christmas trees, firewood, maple syrup, and all other products derived from wood or wood fiber which are manufactured with woodworking equipment including saws, planers, drills, chippers, lumber dry kilns, sanders, glue presses, nailers, notchers, shapers, lathes, molders, and other similar finishing processes.

(4) The director may permit a nonpublic health care facility employer to become a member of a self-insurers' group with public employers pursuant to subsection (2) if the principal service rendered by the nonpublic health care facility employer is the same type of service rendered by the public employers. If a nonpublic health care facility employer is permitted to become a member of the same self-insurers' group with public employers, any lawful award entered by the bureau against that nonpublic health care facility employer, if the award is upheld on appeal, shall be a liability of the group and, if the group is unable to pay the award, the group or the bureau shall individually assess those nonpublic health care facility employers who were members on the date of injury to the extent necessary to pay the award. The director may waive the requirement of the written agreement required of a nonpublic health care facility employer under subsection (2) as to any member of a group involving a combination of public and nonpublic health care facility employers. Except as otherwise provided in this subsection, subsection (2) shall be applicable to all self-insurers' groups and their individual employer members.

(5) The director may decline to approve an application for individual or group self-insurance or terminate the self-insured privilege if the self-insurer fails to demonstrate that the self-insurer will be able to meet all present and future obligations under this act or the self-insurer fails to maintain security requirements previously imposed as a condition for approval. Notice of intent to deny or terminate self-insured status shall be mailed to the self-insurer. The notice shall include the grounds for denial or termination. The self-insurer may request a hearing before the director within 15 days after the mailing of the notice by the bureau. If the recommendation for termination of self-insured status is based on the self-insurer's failure to maintain existing security requirements such as excess insurance, letters of credit, guarantees, or surety bonds, the self-insurer shall reinstate the security requirements pending the hearing. Proof of such reinstatement shall accompany the request for hearing. Failure to reinstate existing security requirements shall allow the director to make a final decision on the evidence before him or her without further hearing.

(6) If an appeal is taken from a decision of the director made pursuant to subsection (5), the director may require the self-insurer to post a surety bond, irrevocable letter of credit, or other security in a reasonable amount to guarantee that money will be available to pay workers' disability compensation benefits to injured employees covered by the self-insured program. Such security shall be filed with the director at the time an appeal is taken to the appellate commission and shall be consistent with the provisions of R 408.43a and R 408.43q of the Michigan administrative code. If the self-insurer is a group fund, the director shall review the assets and liabilities, claims experience history, and future claims potential of the group fund and recognize the ability of the group fund to assess its membership in making a decision on the need for additional security. A claim for review of the director's order or decision made pursuant to subsection (5) shall be filed with the workers' compensation appellate commission within 15 days after the mailing date of the order or decision. If a claim for review is not filed within 15 days, the aggrieved party shall be considered to have waived the right to appeal. Within 15 days after service of a copy of the claim for review, unless the time is extended by order of the appellate commission, the bureau shall file the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for review stipulate that the record be shortened. A party who unreasonably refuses to so stipulate may be taxed by the appellate commission for the additional costs of preparation. If the self-insurer disputes the imposition of additional security at time of appeal, such dispute shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The bureau's reply to such motion shall be filed within 15 days after receipt of appellant's motion. The commission

shall act on the motion within 15 days after filing of the bureau's reply to appellant's motion and shall notify the parties of interest of its decision. The appealing party's brief shall be filed with the appellate commission 15 days after the filing of the record and a copy shall be served upon the opposite party. The bureau's reply brief shall be filed within 15 days after receipt of the appellant's brief. Oral argument may be requested by any party to the proceedings. Such request shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The commission shall act on the motion within 15 days of filing the motion and shall notify the parties in interest of its decision. Otherwise, and subsequent to the expiration of 15 days, the appellate commission shall hear the case upon the record and shall consider such briefs as have been filed. The decision of the appellate commission shall be made within 30 days after the date of the oral argument or, if no oral argument, within 30 days after the date that the bureau's brief is required to be filed. The appellate commission may remand the matter to the bureau for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review. The commencement of proceedings under this section shall not operate as a stay of the bureau's order including any additional security imposed by the director unless stayed by order of the appellate commission. The commission ordered stay shall be subject to such conditions as the appellate commission may impose. The appellate commission shall have the jurisdiction to affirm, modify, or set aside the order or decision of the director. An appeal from a final order entered by the appellate commission relating to a decision or order of the director to deny an application for self-insurance or to terminate the self-insured privilege under subsection (5) may be made by filing an application for leave to appeal to the court of appeals within 30 days after the order.

(7) The director, from time to time, may review and alter a decision approving the election of an employer to adopt any 1 of the methods permitted by subsection (1), (2), or (4) if, in the director's judgment, that action is necessary or desirable for any reason.

(8) Under procedures and conditions specifically determined by the director, an individual, partnership, or corporation desiring to engage in the business of servicing an approved worker's compensation self-insurance program for an individual or group of employers shall make application to the director before entering into a contract with the individual or group of employers and shall satisfy the director that the individual, partnership, or corporation has adequate facilities and competent personnel to service a self-insurance program in a manner which will fulfill the employer's obligations under this act.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1974, Act 45, Imd. Eff. Mar. 19, 1974;—Am. 1976, Act 404, Imd. Eff. Jan. 5, 1977;—Am. 1978, Act 35, Imd. Eff. Feb. 24, 1978;—Am. 1978, Act 245, Imd. Eff. June 20, 1978;—Am. 1980, Act 494, Imd. Eff. Jan. 21, 1981;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1988, Act 386, Eff. Mar. 30, 1989;—Am. 1992, Act 269, Imd. Eff. Dec. 15, 1992;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

Popular name: Act 317